

Senate must give its advise and consent. As Justice Scalia stated for the Supreme Court earlier this year, "[T]he Appointments Clause * * * is more than a matter of etiquette or protocol; it is among the significant structural safeguards of the constitutional scheme."

The involvement of the Senate is designed to promote a high quality of appointments and curb executive abuses. In the words of Alexander Hamilton in Federalist No. 76, "The possibility of rejection [is] a strong motive to care in processing."

This resolution is designed to affirm the Senate's role by insisting that the Attorney General stop interpreting the act out of existence. It expressly states what should already be obvious from the plain language of the Vacancies Act and its legislative history: that the Vacancies Act applies to all executive departments and agencies, including the Department of Justice. The resolution also states that the Attorney General should ensure that the Department of Justice complies with the act, and that she should inform other executive agencies to abide by it, as well.

This is not just a technical issue. It is not an idle problem. At some point this year, six advise and consent positions in the Justice Department have been in violation of the Vacancies Act. The position of the Assistant Attorney General for the Criminal Division has been vacant for over 2 years. This is an excellent example of the problem the Vacancies Act was designed to prevent. The Nation's chief law enforcement agency has been without a confirmed chief for crime since August 31, 1995. No name has been forwarded in the 9 months that this Congress has been in session. Mr. President, what message does that send about the Clinton administration's commitment to fighting crime?

In the meantime, the Attorney General has been in the middle of a tremendous controversy surrounding her reluctance to seek the appointment of an independent counsel to investigate apparently illegal campaign fundraising practices. Would not having a politically accountable chief of the Criminal Division be helpful to her in analyzing whether crimes were committed?

Also, consider the Office of Legal Counsel. Walter Dellinger was confirmed to head OLC in 1993, but he was very controversial. Many members of this body could not support him. Nevertheless, effective July 1, 1996, the Attorney General made Mr. Dellinger acting Solicitor General. The Senate may not have confirmed him to be Solicitor General. Of course, we will never know because by simply naming him acting Solicitor General, the administration avoided a fight over his appointment. For an entire year, for a full term of the Supreme Court, the United States was represented by a Solicitor General who was acting in violation of the Vacancies Act, in violation of the law.

The President has just officially nominated someone else for the vacancy.

Moreover, Mr. Dellinger's appointment caused another violation of the Vacancies Act. When the Attorney General moved Mr. Dellinger, she appointed an acting chief of OLC, who served over 120 days without a permanent nomination being submitted. Not only did this appointment exceed 120 days, it wasn't even legal in the first place. The Vacancies Act not only limits the amount of time someone can serve in an acting capacity, it also limits who can serve. Only someone who was the first assistant, which refers to the principal deputy, or someone who was earlier confirmed to a different advice and consent position can serve in the acting position. Mr. Dellinger's replacement did not meet either of these requirements. Thus, the chief of OLC was serving in violation of the Vacancies Act, in violation of the law, from the first day Mr. Dellinger left.

Mr. President, the vacancies problem is not limited to the Department of Justice. It can be found throughout the executive branch. The Washington Post reported on August 29, 1997, that 30 percent of the top 470 political jobs in the administration remain unfilled. When confronted with the Vacancies Act, many departments and agencies use the Attorney General's argument and also claim not to be bound by the act.

It is time to put the Attorney General's flawed interpretation of the Vacancies Act to rest. Her reading of the Vacancies Act is a threat to the advise and consent role of the Senate. I am hopeful that my colleagues will join me and my cosponsors in supporting this simple but significant resolution. Let us adopt this important resolution, and reaffirm our constitutional duty of advise and consent.

AMENDMENTS SUBMITTED

THE VISA WAIVER PILOT PROGRAM REAUTHORIZATION ACT OF 1997

KYL (AND OTHERS) AMENDMENT NO. 1254

Mr. McCONNELL (for Mr. KYL for himself, Mr. LEAHY, and Mr. JEFFORDS) proposed an amendment to the bill (S. 1178) to amend the Immigration and Nationality Act to extend the visa waiver pilot program, and for other purposes; as follows:

At the end of the bill insert the following section:

SEC. 3. REPORT ON AUTOMATED ENTRY-EXIT CONTROL SYSTEM.

(a) Within six months after the date of enactment of this Act, the Attorney General shall report to the Committees on the Judiciary of the Senate and the House of Representatives on her plans for and the feasibility of developing an automated entry-exit control system that would operate at the land borders of the United States and that would—

(1) collect a record of departure for every alien departing the United States and match the records of departure with the record of the alien's arrival in the United States; and

(2) enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the period authorized by the Attorney General.

(b) Such report shall assess the costs and feasibility of various means of operating such an automated entry-exit control system; shall evaluate how such a system could be implemented without increasing border traffic congestion and border crossing delays and, if any such system would increase border crossing delays, evaluate to what extent such congestion or delays would increase; and shall estimate the length of time that would be required for any such system to be developed and implemented at the land borders.

HUTCHISON AMENDMENT NO. 1255

Mr. McCONNELL (for Mrs. HUTCHISON) proposed an amendment to the bill, S. 1178, supra; as follows:

On page 8, after line 6, insert the following:

(C) REPORTING REQUIREMENTS FOR OTHER COUNTRIES.—For every country from which nonimmigrants seek entry into the United States, the Attorney General shall make a precise numerical estimate of the figures under clauses (A)(i)(I) and (A)(i)(II) and report those figures to the Committees on the Judiciary of the Senate and the House of Representatives within 30 days after the end of the fiscal year.

ABRAHAM (AND KENNEDY) AMENDMENT NO. 1256

Mr. McCONNELL (for Mr. ABRAHAM, for himself and Mr. KENNEDY) proposed an amendment to the bill, S. 1178, supra; as follows:

On page 8, between lines 6 and 7, insert the following new clause:

"(ii) COMMENCEMENT OF AUTHORIZED PERIOD FOR QUALIFYING COUNTRIES.—No country qualifying under the criteria in clauses (i) and (ii) may be newly designated as a pilot program country prior to October 1, 1998.

On page 8, line 6, strike "2002" and insert "2000".

THE PUBLIC HOUSING REFORM AND RESPONSIBILITY ACT OF 1997

MACK AMENDMENT NO. 1257

Mr. McCONNELL (for Mr. MACK) proposed an amendment to the bill (S. 462). A bill to reform and consolidate the public and assisted housing programs of the United States, and to redirect primary responsibility for these programs from the Federal Government to States and localities, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Housing Reform and Responsibility Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.